Dato' Wira Hj Amiruddin bin Hj Hamzah (as Secretary for the Sponsorship Committee of Parti Pejuang Tanahair (PEJUANG) and representing the Sponsorship Committee of PEJUANG) v Menteri Dalam Negeri & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–68–03 OF 2021
AHMAD KAMAL J
25 JUNE 2021

Administrative Law — Judicial review — Mandamus — Application for registration of new political party — Application for registration of new political party rejected by Registrar of Societies — Appeal to Minister of Home Affairs against decision of Registrar of Societies — Failure of Minister of Home Affairs to decide on appeal against decision of Registrar of Societies with convenient speed or reasonable time — Whether first respondent in breach of statutory duty under s 18 of Societies Act 1966 — Societies Act 1966 s 18

The applicant filed an application for judicial review proceedings ('encl 9') pursuant to O 53 of the Rules of Court 2012 to challenge the first respondent's omission or failure to make a decision on the letter of appeal by a new political Parti Pejuang Tanahair ('Pejuang') regarding the refusal of registration by the second respondent. In this judicial review application, the applicant sought: (a) a declaration that the omission and/or failure of the first respondent to make a decision on the letter of appeal by Pejuang regarding the refusal of registration by the second respondent was a breach of its statutory duty under s 18 of the Societies Act 1966 ('the SA 1966'); (b) a declaration that the first respondent's breach of statutory duty to make a decision on the appeal by Pejuang regarding the refusal of registration by the second respondent was against the applicant's legitimate expectation, unreasonable, malicious and an improper attempt to deny the applicant's constitutional right to form associations and/or Pejuang's constitutional right to run in the General Election using its logo; (c) an order of mandamus for the first respondent to give its decision on Pejuang's appeal under s 18(b) of the SA 1966 within seven days from the date of this judgment; and (d) an order of mandamus for the first respondent to instruct the second respondent to finalise the registration of Pejuang within seven days from the date of this judgment. The issues that arose for determination in this application were: (i) whether the first respondent was in breach of its statutory duty under s 18 of the SA 1966 on its omission or failure to make a decision on Pejuang's appeal; (ii) if the first issue was answered in the affirmative, whether an order of mandamus could be granted against the first respondent for him to give his decision on Pejuang's appeal under s 18(b) of the SA 1966; (iii) if the

first issue was answered in the affirmative, whether an order of mandamus could be granted against the first respondent for him to instruct the second respondent to finalise the registration of Pejuang; and (iv) in the absence of time frame stipulated in s 18(b) of the SA 1966, what amounted to all convenient speed or reasonable time for the first respondent to decide on the applicant's appeal against the second respondent's refusal to register Pejuang.

Held, allowing encl 9 in part:

(1) In the instant case, there were no complicated issues involved in making the decision. The reasons put forward by the first respondent as to his busy schedule did not carry weight. The first respondent had officers to assist him with all the tasks, including preparing all relevant documents and files for the first respondent to decide on the appeal filed by the applicant. The time taken by the first respondent in deciding the appeal, approximately five and a half months was beyond the convenient speed. Although the first respondent was not required under the SA 1966 or Interpretation Acts 1948 and 1967 to provide an estimated time frame, but without any effort to provide an estimated time frame made it difficult for the first respondent to justify that the time taken for him to make a decision was all convenient speed or reasonable time. An unknown period of time could not be interpreted as all convenient speed or reasonable time (see paras 35–36).

(2) On the facts of the case, it was solely the duty of the first respondent to make the decision. The decision-making process would not require a long period of time unlike a Commission where views from the members were vital. Although as Minister, the first respondent had other functions and duties, the period of five and a half months was unreasonable for him in making such decision. Even though there were other cases and appeals for the first respondent to consider, the time taken to decide Pejuang's appeal should not be too long as the issue did not involve complicated issues to be decided upon. Therefore, the judgment cited by the respondents in *Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor* [2002] 3 MLJ 714 could be distinguished from the instant case as the former involved a Commission which consist of nine members while in the present case, the decision could only be made by one person, ie, the Minister (first respondent) (see paras 45–47).

(3) Pejuang and the second respondent had a few meetings and correspondences pertaining to the registration of Pejuang. Pejuang had also amended its constitution several times after those incidents took place. In spite of that, the second respondent rejected the applicant's application on the reason that Pejuang's application was not in accordance with Schedule I of the SA 1966. Yet, instead of making a decision on the appeal with all convenient speed, the first respondent

instructed the second respondent to have another meeting with Pejuang to discuss further on its constitution. Therefore, the decision was not made within a reasonable time and hence there was a delay by the first respondent in making the decision (paras 50–52).

(4) The prayer on mandamus was granted against the first respondent for him to give his decision on Pejuang's appeal under s 18(b) of the SA 1966. This was because s 44(1) of the Specific Relief Act 1950 conferred wide power to the court to grant this prerogative writ to direct the first respondent to perform his public duty which he was required to perform by reading both s 18(b) of the SA 1966 and s 54(2) of the Interpretation Acts 1948 and 1967. However, the prayer for mandamus order to instruct the second respondent to finalise the registration of Pejuang was dismissed. This was because the relief sought for falls outside the scope of s 18(b) SA 1966, which was limited to confirm, reject or vary the decision of the registrar within all convenient speed or reasonable time (see paras 61 & 63).

[Bahasa Malaysia summary

Pemohon memfailkan permohonan prosiding semakan kehakiman ('lampiran 9') menurut A 53 Kaedah-Kaedah Mahkamah 2012 untuk mencabar pengecualian atau kegagalan responden pertama membuat keputusan mengenai surat rayuan oleh politik baharu Parti Pejuang Tanahair ('Pejuang') berhubung keengganan pendaftaran oleh responden kedua. Dalam permohonan semakan kehakiman ini, pemohon memohon: (a) satu deklarasi bahawa pengecualian dan/atau kegagalan responden pertama membuat keputusan mengenai surat rayuan oleh Pejuang berhubung keengganan pendaftaran oleh responden kedua adalah pelanggaran kewajipan statutorinya di bawah s 18 Akta Pertubuhan 1966 ('AP 1966'); (b) satu deklarasi bahawa pelanggaran kewajipan statutori responden pertama untuk membuat keputusan mengenai rayuan oleh Pejuang berhubung keengganan pendaftaran oleh responden kedua adalah bertentangan dengan jangkaan sah pemohon, tidak munasabah, berniat jahat dan percubaan tidak wajar untuk menafikan hak perlembagaan pemohon untuk menubuhkan persatuan dan/atau hak perlembagaan Pejuang untuk bertanding dalam Pilihan Raya Umum menggunakan logonya; (c) satu perintah mandamus untuk responden pertama memberikan keputusannya mengenai rayuan Pejuang di bawah s 18(b) AP 1966 dalam tempoh tujuh hari dari tarikh penghakiman ini; dan (d) satu perintah mandamus untuk responden pertama mengarahkan responden kedua memuktamadkan pendaftaran Pejuang dalam tempoh tujuh hari dari tarikh penghakiman ini. Isu-isu yang timbul untuk ditentukan dalam permohonan ini adalah: (i) sama ada responden pertama telah melanggar kewajipan statutorinya di bawah s 18 AP 1966 mengenai pengecualian atau kegagalannya membuat keputusan mengenai rayuan Pejuang; (ii) jika isu pertama telah dijawab secara afirmatif, sama ada perintah mandamus boleh diberikan

terhadap responden pertama untuk beliau memberikan keputusannya mengenai rayuan Pejuang di bawah s 18(b) AP 1966; (iii) sekiranya isu pertama dijawab secara afirmatif, sama ada perintah mandamus boleh diberikan terhadap responden pertama untuk beliau mengarahkan responden kedua memuktamadkan pendaftaran Pejuang; dan (iv) sekiranya tiada tempoh masa yang ditetapkan dalam s 18(b) AP 1966, apakah yang terjumlah kepada kesemua kecepatan yang sesuai atau masa yang munasabah untuk responden pertama memutuskan rayuan pemohon terhadap keengganan responden kedua untuk mendaftarkan Pejuang.

Diputuskan, membenarkan sebahagian lampiran 9:

(1) Dalam kes semasa, tidak ada isu rumit yang terlibat dalam membuat keputusan. Alasan yang dikemukakan oleh responden pertama kerana kesibukannya tidak membawa sebarang berat. Responden pertama mempunyai pegawai untuk membantunya dengan semua tugas termasuk menyediakan kesemua dokumen dan fail yang berkaitan untuk responden pertama memutuskan rayuan yang difailkan oleh pemohon. Masa yang diambil oleh responden pertama dalam memutuskan rayuan, kira-kira lima setengah bulan adalah melebihi kecepatan yang sesuai. Walaupun responden pertama tidak dikehendaki di bawah AP 1966 atau Akta Tafsiran 1948 dan 1967 untuk menyediakan anggaran jangka masa, tetapi tanpa sebarang usaha untuk menyediakan anggaran jangka masa menyukarkan responden pertama untuk mewajarkan bahawa masa yang diambil untuk beliau membuat keputusan adalah semua kecepatan yang sesuai atau masa yang munasabah. Tempoh masa yang tidak diketahui tidak boleh ditafsirkan sebagai semua kecepatan yang sesuai atau masa yang munasabah (lihat perenggan 35–36).

(2) Berdasarkan fakta kes, adalah menjadi tanggungjawab responden pertama untuk membuat keputusan. Proses membuat keputusan tidak memerlukan tempoh masa yang lama tidak seperti Suruhanjaya yang mana pandangan daripada ahli adalah penting. Walaupun sebagai Menteri, responden pertama mempunyai fungsi dan tugas lain, tempoh lima setengah bulan adalah tidak munasabah untuk beliau membuat keputusan sedemikian. Walaupun terdapat kes dan rayuan lain yang perlu dipertimbangkan oleh responden pertama, masa yang diambil untuk memutuskan rayuan Pejuang tidak seharusnya terlalu lama kerana isu itu tidak melibatkan isu rumit untuk diputuskan. Oleh itu, penghakiman yang dipetik oleh responden dalam *Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor* [2002] 3 MLJ 714 boleh dibezakan daripada kes semasa kerana yang ia melibatkan Suruhanjaya yang terdiri daripada sembilan anggota manakala dalam kes semasa, keputusan hanya boleh dibuat oleh seorang, iaitu Menteri (responden pertama) (lihat perenggan 45–47).

(3) Pejuang dan responden kedua telah mengadakan beberapa pertemuan dan surat-menyurat berkaitan pendaftaran Pejuang. Pejuang juga telah beberapa kali meminda perlembagaannya selepas insiden tersebut berlaku. Walaupun begitu, responden kedua menolak permohonan pemohon atas alasan permohonan Pejuang tidak mengikut Jadual I AP 1966. Namun, daripada membuat keputusan rayuan dengan secepat mungkin, responden pertama mengarahkan responden kedua mengadakan satu lagi pertemuan dengan Pejuang untuk membincangkan lebih lanjut mengenai perlembagaannya. Oleh itu, keputusan tidak dibuat dalam masa yang munasabah dan oleh itu terdapat kelewatan oleh responden pertama dalam membuat keputusan (perenggan 50–52).

(4) Prayer bagi mandamus telah dibenarkan terhadap responden pertama untuk beliau memberikan keputusannya mengenai rayuan Pejuang di bawah s 18(b) AP 1966. Ini kerana s 44(1) Akta Relief Spesifik 1950 memberikan kuasa yang luas kepada mahkamah untuk membenarkam writ prerogatif ini untuk mengarahkan responden pertama melaksanakan kewajipan awamnya yang beliau perlu laksanakan dengan membaca kedua-dua ss 18(b) AP 1966 dan 54(2) Akta Tafsiran 1948 dan 1967. Walau bagaimanapun, prayer untuk perintah mandamus untuk mengarahkan responden kedua untuk memuktamadkan pendaftaran Pejuang telah ditolak. Ini adalah kerana relif yang dimohon berada di luar skop s 18(b) AP 1966, yang hanya terhad untuk mengesahkan, menolak atau mengubah keputusan pendaftar dalam semua kecepatan yang sesuai atau masa yang munasabah (lihat perenggan 61 & 63).]

Cases referred to

Chong Co Sdn Bhd v Majlis Perbandaran Pulau Pinang [2000] 5 MLJ 130 (refd)

Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor [2002] 3 MLJ 714; [2002] 2 MLRA 210; [2002] 4 CLJ 85, CA (distd)

Keng Kien Hock v Timbalan Menteri Keselamatan Dalam Negeri Malaysia and other appeals [2007] 5 MLJ 611; [2007] 1 MLRA 807, CA (refd)

Minister of Finance, Government of Sabah v Petrojasa Sdn Bhd [2008] 4 MLJ 641; [2008] 5 CLJ 305; [2008] 1 MLRA 705, FC (folld)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35; [1982] 1 MLRA 624, FC (refd)

Phua Hing Lai v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors and other appeals [1990] 1 MLJ 173; [1990] 1 CLJ Rep 238; [1989] 1 MLRA 299, SC (refd)

Tai Choi Yu v Government of Malaysia & Ors [1994] 1 MLJ 677; [1994] 1 MLRA 87; [1994] 2 CLJ 174, SC (refd)

Vellama d/o Marie Muthu v Attorney-General [2013] 4 SLR 1; [2013] SGCA 39, CA (refd)

Legislation referred to

Courts of Judicature Act 1964 s 25(2), Schedule I, para 1
Interpretation Act [SG] s 52
Interpretation Acts 1948 and 1967 s 54(2)
Rules of Court 2012 O 53, O 53 r 3(2)
Societies Act 1966 ss 7, 7(3)(e), 18, 18(b)
Specific Relief Act 1950 s 44(1)

Muhammad Rafique Rashid Ali (Nurmustanir Md Noor, Mior Nor Haidar and Akif Rusli with him) (Law Practice of Rafique) for the applicant.
Ahmad Hanir Hambaly (Mohamad Sallehuddin Md Ali and Liyana bt Muhamad Fuad with him) (Attorney General's Chambers) for the respondents.

Ahmad Kamal J:

INTRODUCTION

[1] The applicant had on 1 March 2021 filed an application for judicial review proceedings (encl 9) pursuant to O 53 of the Rules of Court 2012 ('the ROC 2012') to challenge the first respondent's omission or failure to make a decision on the letter of appeal by a new political Parti Pejuang Tanahair ('Pejuang') dated 8 January 2021 regarding the refusal of registration by the second respondent. The leave was granted by this court on 1 April 2021.

[2] In this judicial review application, the reliefs sought by the applicant are as follows:

(a) a declaration that the omission and/or failure of the first respondent to make a decision on the letter of appeal by Pejuang dated 8 January 2021 regarding the refusal of registration by the second respondent is a breach of its statutory duty under s 18 of the Societies Act 1966 ('the SA 1966');

(b) a declaration that the first respondent's breach of statutory duty to make a decision on the appeal by Pejuang dated 8 January 2021 regarding the refusal of registration by the second respondent is against the applicant's legitimate expectation, unreasonable, malicious and an improper attempt to deny the applicant's constitutional right to form associations and/or Pejuang's constitutional right to run in the General Election using its logo;

(c) an order of mandamus for the first respondent to give its decision on Pejuang's appeal under s 18(b) of the SA 1966 within seven days from the date of this judgment; and

(d) an order of mandamus for the first respondent to instruct the second respondent to finalise the registration of Pejuang within seven days from the date of this judgment.

[3] After detailed considerations of the applicant's application for judicial review (encl 9), the statement filed pursuant to O 53 r 3(2) of the ROC 2012, the affidavit in support, the applicant's affidavit in reply, the respondents' affidavit in reply and written submissions as well as oral submissions by both parties, I allowed the applicant's application in encl 9. This judgment contains the full reasons for my decision.

BACKGROUND FACTS

[4] The chronology of event that led to the filing of this judicial review are largely undisputed and can be summarised as follows:

(a) on 13 August 2020, the applicant made an online application for the registration of Pejuang;

(b) on 19 August 2020, the applicant and Committee Members of Pejuang had a meeting with the second respondent.

(c) on 28 September 2020, the second respondent and Committee Members of Pejuang had a meeting. The second respondent suggested to Pejuang to make several amendments to its Constitution;

(d) on 2 October 2020, Pejuang submitted its amended Constitution to the second respondent;

(e) on 22 October 2020, the applicant submitted the application to use Pejuang's logo or emblem to the second respondent;

(f) on 17 November 2020, a meeting was held between Pejuang and the second respondent. The second respondent rejected Pejuang to use its logo and manage its website to deal with matters relating to the working operation of Pejuang except when dealing with the Registrar;

(g) on 19 November 2020, the applicant made further amendment to its Constitution and enclosed list of Committee Members following the resignation of YB Dr Maszlee as a Committee Member of Pejuang;

(h) on 6 January 2021, the second respondent issued a letter of its decision refusing to register Pejuang under s 7(3)(e) of the SA 1966 as the application is not in accordance with Schedule I of the SA 1966;

(i) on 8 January 2021, Pejuang submitted a revised Constitution and appealed to the first respondent;

(j) on 4 February 2021, the first respondent had instructed the second respondent to hold a meeting with Pejuang and to discuss further on its Constitution;

(k) thereafter, on 5 February 2021, both the second respondent and Pejuang had a meeting to discuss on its Constitution; and

(l) following the meeting, Pejuang submitted its revised Constitution on 8 February 2021 and on 1 March 2021, the applicant filed an application for judicial review in court.

ISSUES

[5] Having perused the cause papers, I am of the view that the issues that have to be determined are as follows:

(a) whether the first respondent is in breach of its statutory duty under s 18 of the SA 1966 on its omission or failure to make a decision on Pejuang's appeal;

(b) if the first issue is answered in the affirmative, whether an order of mandamus can be granted against the first respondent for him to give his decision on Pejuang's appeal under s 18(b) of the SA 1966; and

(c) if the first issue is answered in the affirmative, whether an order of mandamus can be granted against the first respondent for him to instruct the second respondent to finalise the registration of Pejuang.

THE SOCIETIES ACT 1966 AND INTERPRETATION ACTS 1948 AND 1967

[6] The governing legislation on the registration of a society is provided for under s 7 of the SA 1966 where the Registrar of Society may register or refuse to register a society.

[7] For better understanding of s 7 of the SA 1966, it is reproduced in extenso as follows:

> 7 Registration and refusal to register
>
> (1) Upon receipt of an application under section 6, the Registrar shall, subject to the provisions of this section and to such conditions as the Registrar may deem fit to impose, register the local society making the application.
>
> (2) The Registrar may refuse to register a local society if —
>
> (a) he is satisfied that such a society is a branch of any society whose registration has been cancelled under paragraph 13(1)(c); or
>
> (b) he is not satisfied that such local society has complied with the provisions of this Act and of the regulations made thereunder; or
>
> (c) a dispute exists among the members of such local society as to the persons who are to be office-bearers or to hold or to administer any property of the society until the dispute is decided by a Court or by arbitration or by agreement between the members or otherwise.
>
> (3) The Registrar shall refuse to register a local society where —

A (a) it appears to him that such local society is unlawful under the provisions of this Act or any other written law or is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia;

B (b) the society has been declared by the Minister to be unlawful under section 5;

(c) the Registrar is satisfied that the society does not exist;

(d) the name under which the society is to be registered—

C (i) appears to the Registrar to mislead or be calculated to mislead members of the public as to the true character or purpose of the society or so nearly resembles the name of such other society as is likely to deceive the members of the public or members of either society;

D (ii) is identical to that of any other existing local society; or

(iii) is, in the opinion of the Registrar, undesirable;

(e) the constitution or rules of the society do not contain provisions for all matters set out in Schedule I to this Act or if the society is a mutual benefit

E society, matters set out in Schedule II or any other matters which the Registrar may reasonably require.

(4) Where the Registrar has refused to register a local society under this section, the provisions of section 17 shall apply to that local society.

F (5) Any society that contravenes any condition imposed on it by the Registrar under subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding two thousand ringgit.

[8] Section 18(b) of the SA 1966 provides that any office-bearer or member

G of such local society who is aggrieved by the Registrar's refusal to register the society may within 30 days from the date of the decision of the Registrar, appeal against the decision to the Minister, whose decision shall be final.

[9] The provision of s 18(b) of the SA 1966 is as follows:

H 18 Appeals

Any local society, office-bearer or member of such local society or any other person who is aggrieved by the decision of the Registrar in any of the following cases —

(a) ...

I (b) refusal to register the society under section 7;

...

may, within thirty days from the date of the decision of the Registrar, appeal against the decision to the Minister; and the Minister whose decision shall be final may confirm, reject or vary the decision of the Registrar.

[10] It is noted that s 18(b) of the SA 1966 is silent on the time frame of the Minister to make a decision whether to confirm, reject or vary the decision of the Registrar. Thus, this is the core issue of the instant case.

[11] It is the applicant's submission that in the absence of stipulated time frame under s 18(b) of the SA 1966, reference shall be made to s 54(2) of the Interpretation Acts 1948 and 1967 ('the IA 1948 and 1967').

[12] Section 54(2) of the IA 1948 and 1967 deals with computation of time which reads as follows:

> 54 Computation of time
>
> (2) Where no time is prescribed within which anything shall be done, that thing *shall be done with all convenient speed* and as often as the prescribed occasion arises. (Emphasis added.)

[13] The applicant further submitted that reading both s 18(b) of the SA 1966 and s 54(2) of the IA 1948 and 1967 together, the first respondent has a statutory duty to make a decision on the appeal of Pejuang with all convenient speed.

[14] On the other hand, it is the respondents' submission that the decision to refuse the registration lies under s 7(3)(e) of the SA 1966. The provision confers the second respondent the power to refuse the registration of a society if the constitution or rules of the society do not contain provisions for all matters set out in Schedule I of the SA 1966.

[15] The provision of s 7(3)(e) of the SA 1966 is as follows:

> (3) The Registrar shall refuse to register a local society where —
>
> (a) ...
>
> ...
>
> (e) the constitution or rules of the society do not contain provisions for all matters set out in Schedule I to this Act or if the society is a mutual benefit society, matters set out in Schedule II or any other matters which the Registrar may reasonably require.

[16] Schedule I of the SA 1966 further provides as follows:

> SCHEDULE I
>
> [Paragraph 7(3)(e)]
>
> CONSTITUTION AND RULES OF SOCIETIES
>
> (1) Matters for which provisions shall be made in the constitution or rules of every local society or a branch thereof shall be as follows —

A (a) the name and registered place of business or registered postal address of the society;

(b) *(Deleted by Act A557)*;

(c) an accurate description of the design and colours of any flag, emblem, badge or other insignia used by the society;

B (d) the aims or objects for which the society is formed, or which it may pursue, or for which its funds or any of them may be used;

(e) the qualifications for membership, including particulars of any restriction or limitations that may be imposed as to the numbers, age limits, sex, religion, race, nationality, dwelling place, clan or surname of persons who may be admitted to membership of the society;

C (f) the method of appointment or election of members;

(g) the composition and method of appointment of the committee or governing body and the designations, powers and functions of the office-bearers of the society and where applicable the branches thereof;

D (gg) that, if the Registrar so requires, the office-bearers of the society and every officer performing executive functions in such society shall be Federal citizens;

(h) the sources from which the society shall derive its income, including the rates and method of payment of such entrance fees and periodical subscriptions as may be decided upon;

E (i) the authority or authorities for expenditure from the funds of the society;

(j) the keeping of accounts of the income and expenditure of the society and the publication of such accounts to its members annually;

F (k) the appointment of one or more auditors;

(l) the quorum required for the transaction of business at any meeting of the society or its governing body; and

(m) the manner by and in which the constitution or rules of the society may be amended.

G (2) Where a society is a political party, the constitution or rules thereof shall, in addition to matters enumerated in paragraph 1, provide that —

(a) every member of the society, every officer performing executive functions in such society and every adviser, to such society, shall be Federal citizens; and

H (b) every member shall have a right to vote and shall be eligible to hold office in the committee or governing body in the society.

(3) Where any registered society makes provision in its constitution or rules for the establishment of branches it shall in addition also provide therein for the method and manner by which the establishment of such branches shall be approved by the society or its governing body.

I **[17]** It is the respondents' submission that there is no omission and/or failure on the first respondent to make a decision on the applicant's appeal against the

refusal of the second respondent to register Pejuang. In fact, the first respondent is still in the process of considering the appeal and will make a decision on the appeal. In other words, pending to make a decision is not an omission or failure.

[18] The respondents also submitted that as a Minister of Home Affairs, the first respondent carries other functions and duties. That has in a way contributed to the delay in the decision making since the first respondent has been occupied with other functions and duties.

[19] The respondents submitted that as of 28 April 2021, there were 102 appeals by various societies under s 18 of the SA 1966 which the first respondent is currently reviewing and this includes the appeal by the applicant which is number 90 in sequence of the list of appeals.

[20] The respondents further submitted that the first respondent received a large number of appeals as there are 12 categories under the second respondent's decisions that can be appealed to the first respondent under s 18 of the SA 1966. It is necessary for the first respondent to carefully review each appeal before a decision is made.

[21] Whilst the respondents agreed that s 18(b) of the SA 1966 does not prescribe a time frame for the first respondent to make a decision, it shall be done with all convenient speed as provided under s 54(2) of the IA 1948 and 1967.

[22] Hence, it is the respondents' submission that what amounts to all convenient speed in each case depends on its own peculiar facts and circumstances.

THE LAW

[23] As alluded above, both parties shared the same view that what amounts to convenient speed is a matter of interpretation depending on the facts and circumstances of each case. The legal position of the same has been established in numerous local cases.

[24] In *Tai Choi Yu v Government of Malaysia & Ors* [1994] 1 MLJ 677; [1994] 1 MLRA 87; [1994] 2 CLJ 174, the then Supreme Court emphasised that the meaning of convenient speed to mean reasonable time according to facts and circumstances of the case. It was held that:

> What is 'convenient speed' has been held by the courts to mean reasonable time within which an act has to be done, but always having regard to the facts and peculiar circumstances of each case.

[25] Furthermore, the then Supreme Court in the case of *Phua Hing Lai v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors and other appeals* [1990] 1 MLJ 173; [1990] 1 CLJ Rep 238; [1989] 1 MLRA 299 held as follows:

> Section 3 of the enactment provides for the implementation of an order made under s 2(ii). For convenience the whole of s 3(i) and (ii) are reproduced below:
>
> (i) When any such order as is referred to in section 2 subsection (ii) or section 2A has been made with reference to any person, he shall be taken before the Officer-in-Charge of the prison in which he is detained and the Officer-in-Charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside;
>
> (ii) As soon as may be after action has been taken under subsection (i), the Officer-in-Charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the Schedule to any Police Officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.
>
> *It can immediately be observed that there is no time frame given in s 3(i) of the Enactment. Since no time is prescribed, then, according to s 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed.*
>
> There is, however, a time frame given by s 3(ii) of the Enactment imposed by the words 'as soon as may be after action has been taken under subsection (i)' appearing in that subsection. *The words 'as soon as may be' means as nearly as may be reasonable in the circumstances of the case.* See also *Aminah v Superintendent of Prison, Pengkalan Chepa, Kelantan* [1968] 1 MLJ 92.
>
> *Whoever caused the delay must explain the delay; and it is for the court to decide whether the delay is reasonable under the circumstances.* (Emphasis added.)

[26] The above decision was also followed by the Court of Appeal in the case of *Keng Kien Hock v Timbalan Menteri Keselamatan Dalam Negeri Malaysia and other appeals* [2007] 5 MLJ 611; [2007] 1 MLRA 807 which held as follows:

> [6] It is to be noted that s 54(2) of the Interpretation Acts 1948 and 1967 (Act 388) provides that where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises. The term 'all convenient speed' is not defined by any statute. However, the definition and meaning of 'all convenient speed' in the context of the scope of s 2 of the Act can be found from the judicial pronouncement made in earlier decided cases. In the Supreme Court's case of *Phua Hing Lai v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors and other appeals* [1990] 1 MLJ 173; [1990] 1 CLJ Rep 238; [1989] 1 MLRA 299, His Lordship Hashim Yeop Sani, CJ Malaya at pp 421–422 had this to say: It can immediately be observed that there is no time frame

given in s 3(i) of the Enactment. Since no time is prescribed then according to s 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed. There is however a time frame given by s 3(ii) of the Enactment imposed by the words 'as soon as may be after action has been taken under subsection (i)' appearing in that subsection. The words 'as soon as may be' means as nearly as may be reasonable in the circumstances of the case. See also *Aminah v Superintendent of Prison, Pengkalan Chepa* [1968] 1 MLJ 92; [1967] 1 MLRH 45.

Whoever caused the delay must explain the delay; and it is for the court to decide whether the delay is reasonable under the circumstances. (Emphasis added.)

[27] In Singapore, s 52 of the Interpretation Act (Cap 1, 2002 Rev Ed) is almost in pari materia with our s 54(2) of the IA 1948 and 1967. The provision of s 52 of the Interpretation Act (Cap 1, 2002 Rev Ed) is as follows:

here no time is prescribed or allowed within which anything shall be done that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

[28] In *Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1; [2013] SGCA 39, in interpreting 'all convenient speed', the Court of Appeal of Singapore stated that:

[84] While s 52 refers to the test of 'all convenient speed', it seems to us that what this provision basically enshrines is the common law concept of a reasonable time, which must of necessity take into account all the circumstances relevant to the act to be carried out.

[29] In essence, in both Malaysia and Singapore, the courts will look into the facts and circumstances of each case in order to determine what is all convenient speed, ie what is reasonable time.

DECISION OF THE COURT

[30] At the outset, it is an undisputed fact that Pejuang is a political party. In a democratic country, political party represents the voices of the people sharing the similar vision for the country.

[31] I am minded that the issue in this judicial review is not about the refusal of the second respondent to register Pejuang as a society, but on the alleged omission or failure on the first respondent to decide on whether to confirm, reject or vary the decision of the second respondent.

[32] In other words, in the absence of time frame stipulated in s 18(b) of the SA 1966, what amounts to all convenient speed or reasonable time for the first

A respondent to decide on the applicant's appeal against the second respondent's refusal to register Pejuang. This is the crux of the matter, which will depend on the facts and circumstances of the case.

B **[33]** Based on the facts of the case, the applicant had on 8 January 2021 filed an appeal to the first respondent against the refusal of the registration of Pejuang by the registrar of the second respondent. There has been no decision made on the said appeal until now.

C **[34]** I agree with the respondents that it is necessary for the first respondent to carefully review each appeal before a decision is made. However, considering the facts and circumstances of the case, the time taken for the first respondent to carefully review the appeal must be of a reasonable time or with all convenient speed. The first respondent cannot be taking too long to decide on
D the appeal as the issue involved is not too complicated.

[35] In the instant case, it is my view that there are no complicated issues involved in making the decision. The reasons put forward by the first respondent as to his busy schedule does not carry weight. The first respondent
E has officers to assist him with all the tasks, including preparing all relevant documents and files for the first respondent to decide on the appeal filed by the applicant. The time taken by the first respondent in deciding the appeal, approximately 5 1/2 (five and a half) months until now, from 8 January 2021, in my view is beyond the convenient speed.

F

[36] Although the first respondent is not required under the SA 1966 or IA 1948 and 1967 to provide an estimated time frame, but without any effort to provide an estimated time frame makes it difficult for the first respondent to justify that the time taken for him to make a decision is the all convenient speed
G or reasonable time. To me, an unknown period of time cannot be interpreted as all convenient speed or reasonable time in this instant case.

[37] In *Chong Co Sdn Bhd v Majlis Perbandaran Pulau Pinang* [2000] 5 MLJ 130; the respondent did not give any reply as to the status of the appellant's
H application for planning permission. The applicant appealed against the 'decision' or silence of the respondent. Jeffrey Tan J (as he then was) sitting on the Appeal Board held that:

> Clearly, a local planning authority is required by law, *on the receipt of an application for planning permission, to decide on the application* (s 22(1)). A local authority
I cannot not decide on an application. Indeed, s 22(1) enjoins a local planning authority not only to decide, but *to decide 'as soon as possible', words which mean 'within a reasonable time, the shortest practicable'* (*Hydraulic Engineering Co v McHaffie* (1878) 4 QBD 670 at p 673), *'as soon as may be'* (*Ooi Ah Phua v Officer-in-Charge, Criminal Investigations Kedah/Perlis* [1975] 1 MLJ 93), *but not*

'as late as possible' (*Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 at pp 37–38, per Salleh Abas CJ (Malaya) (as he then was). Consequently, a local planning authority *must decide within reasonable time or without unreasonable delay having regard to all the circumstances of the case and the things to be done. It cannot 'sit' on an application, so to speak.* (Emphasis added.)

[38] Listing down the functions and duties of a Minister of Home Affairs has little assistance to the court to consider what is all convenient speed or reasonable time. In *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35; [1982] 1 MLRA 624, Salleh Abas CJ (Malaya) (as he then was) in interpreting convenient speed stated that:

What then is the 'convenient speed'? In our view it must be *'as soon as possible'* or *'within a reasonable time'*, and *not 'as late as possible'*. Obviously what amounts to 'convenient speed' must vary from case to case and in our judgment seven years delay is certainly not a 'convenient speed' as it is so *far outside the normal period of time that no reasonable authority could ever regard it as reasonable*. That being the case the court is entitled to strike down the impugned acquisition proceedings as illegal. (*Regina v St Albans Crown Court Ex-parte Cinnamond* [1981] QB 480 *and Regina v Tottenham Justices Ex-parte Dwarkados Joshi* [1982] 1 WLR 631). (Emphasis added.)

[39] In commenting on the workload and duties of the authority, Salleh Abas CJ (Malaya) (as he then was) further stated that the interest of the subject must also not to be neglected:

The Collector may well have plenty of work and other duties to perform within the available time at his disposal, but he must consider not only the interests of the State of which he is an official, but also that of the land owners, whose land he is acquiring. He must therefore arrange his duties in such a way as not to neglect their interests altogether. Failure to do so, resulting in the diminution of their interests, in our view, amounts to an abuse of power, which entitles the land owners concerned to an order of certiorari. That the Collector is required to make an inquiry without much delay is clearly shown by paragraph 1(1) of the First Schedule of the Act itself. As this paragraph fixes the market value of the land as on the date of the declaration it is implicit that the Collector is under a duty to hold the inquiry within such time as would not render the market value of the land at the time of the award to be substantially different from that prevailing on that date of the declaration. If the delay in holding the enquiry in this case is allowed, paragraph 1(1) of the First Schedule would become an engine or a purveyor of injustice. Surely this was not the intention of the legislature. *By providing no time limit within which the Collector should hold an inquiry the legislature leaves the discretion in the matter to the Collector, but it is certainly not its intention that the Collector shall be free to use it at any time he chooses to inquire at the expense of the land owner or regardless of his right.* As demonstrated in this case, the Collector's delay in holding the inquiry under section 10 of the Act seven years after the declaration of acquisition resulting in an inadequate compensation to the respondent brings the inquiry and the award outside the purview and scope of the Act. Such delay tantamounts to an abuse of power and renders the inquiry and subsequent proceedings null and void. We therefore agree

with the learned Judicial Commissioner's conclusion that an order of certiorari should be issued to quash the acquisition proceedings. (Emphasis added.)

[40] In this instant case, the respondents submitted that there are 102 appeals for the first respondent to decide. However, it is unclear to me how many of the 102 appeals is related to the registration of a political party and how many of the other appeals has the same or higher degree of importance and urgency which requires the first respondent to take speedier action to decide.

[41] The respondents had relied on the decision of the Court of Appeal in *Harbhajan Singh v Suruhanjaya Pasukan Polis, Malaysia & Anor* [2002] 3 MLJ 714; [2002] 2 MLRA 210; [2002] 4 CLJ 85 to support its contention that the delay of 5 1/2 (five and a half) months is not inordinate delay.

[42] The Court of Appeal, speaking through Abdul Hamid Mohamad JCA (as he then was) stated his reasons as follows:

> Regarding the constitution of the Commission, as pointed out by the learned judge, it consists of nine members, headed by the Prime Minister of Malaysia in his then capacity as Minister of Home Affairs. The other members were the Inspector General of Police, the President of the Court of Appeal and six other notable personalities. DW1, the assistant secretary of the Commission explained the procedures of the decision making process. The relevant documents were forwarded to the members of the Commission who had to study them and return them to the Commission Secretariat with their views. The views subsequently received from the members were 'processed' and the decision would then be forwarded to the Chairman of the Commission.
>
> The learned judge considered the extremely heavy duties of the members and the fact that the Commission's Secretariat was handling a great number of disciplinary cases and concluded that the Commission had discharged its duties within a reasonable time or, in the words of s 54 of the Interpretation Act 'with all convenient speed.

[43] Based on *Harbhajan Singh*, it is clear that the decision was to be made by a Commission which consist of nine members, including the Prime Minister and nine other members who were the Inspector General of Police, the President of the Court of Appeal and six other notable personalities.

[44] The Court of Appeal held that considering the heavy duties of the members of the Commission and the large number of disciplinary cases the Commission was handling, there was no delay by the Commission in making the decision even though it was only made after one year and eight months.

[45] Coming back to the facts of the present case, it is clear that the first respondent is the only person who will make the decision. There is no other

person involved in making the decision. Therefore, the process does not involve other persons which will have to submit their views and opinions to the Commission. It is solely the duty of the first respondent to make the decision. The decision making process will not require a long period of time unlike a Commission where views from the members are vital. I take note that as a Minister, the first respondent has other functions and duties, but to me the period of 5 1/2 months is unreasonable for him in making such decision.

[46] I reiterate my earlier view that, even though there were other cases and appeals for the first respondent to consider, the time taken to decide Pejuang's appeal should not be too long as the issue does not involve complicated issues to be decided upon.

[47] Therefore, I am of the considered opinion that the judgment cited by the respondents in *Harbhajan Singh* can be distinguished from the instant case as the former involved a Commission which consist of nine members while in our present case, the decision can only be made by one person, ie the Minister (first respondent).

[48] Further to that, the reason in which the second respondent had rejected the applicant's application for not being in accordance with Schedule I of the SA 1966 has to be addressed.

[49] The relevant part of the letter dated 6 January 2021 from the second respondent informing the refusal is as follows:

> Jabatan Pendaftaran Pertubuhan Malaysia (JPPM) telah melaksanakan semakan terperinci ke atas *permohonan Parti Pejuang Tanahair (NSID-059-13082020)* dan mendapati bahawa permohonan pihak YB Dato' adalah tidak teratur selaras dnegan peruntukan Jadual 1 Akta Pertubuhan 1966 [Akta 335]. Oleh yang demikian, permohonan pendaftaran pertubuhan yang dinyatakan di atas adalah *ditolak* berdasarkan perunutukan *Seksyen 793(e) Akta 335*.

[50] However, it is an undisputed fact that Pejuang and the second respondent had a few meetings and correspondences pertaining to the registration of Pejuang. Pejuang had also amended its Constitution several times after those incidents took place. In spite of that, the second respondent rejected the applicant's application on the reason that Pejuang's application is not in accordance with Schedule I of the SA 1966.

[51] Yet, instead of making a decision on the appeal with all convenient speed, the first respondent on 4 February 2021 instructed the second respondent to have another meeting with Pejuang to discuss further on its Constitution. This shows that the first respondent was aware of what is indeed

the alleged non-compliance, otherwise he would not be in a position to instruct the second respondent to have a meeting with Pejuang to discuss further on Pejuang's Constitution per se.

[52] Based on the above, I am of the view that the decision was not made within a reasonable time and hence there was a delay by the first respondent in making the decision.

MANDAMUS

[53] In a judicial review application, the court's jurisdiction to grant an order of mandamus is found in s 25(2) of the Courts of Judicature Act 1964 ('the CJA 1964'), para 1 of the Schedule to the CJA 1964, and s 44(1) of the Specific Relief Act 1950 ('the SRA 1950').

[54] The provision of s 25(2) of the CJA is as follows:

> (2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:
>
> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

[55] The provision of para 1 of the Schedule to the CJA 1964 is as follows:

> 1. Prerogative writs
>
> Power to issue to any person or authority directions, orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any others, for the enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose.

[56] The provision of s 44(1) of the SRA 1950 is as follows:

> 44 Power to order public servants and others to do certain specific acts
>
> (1) A Judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any court subordinate to the High Court:
>
> Provided that —
>
> (a) an application for such an order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing, as the case may be, of the said specific act;
>
> (b) such doing or forbearing is, under any law for the time being in force, clearly incumbent on the person or court in his or its public character, or on the corporation in its corporate character;
>
> (c) in the opinion of the Judge the doing or forbearing is consonant to right and justice;

(d) the applicant has no other specific and adequate legal remedy; and

(e) the remedy given by the order applied for will be complete.

[57] In *Minister of Finance, Government of Sabah v Petrojasa Sdn Bhd* [2008] 4 MLJ 641; [2008] 5 CLJ 305; [2008] 1 MLRA 705, the Federal Court dismissed the appellant's appeal and allowed the respondent's application for an order of mandamus against the appellant to pay the judgment sum. Noting on the nature of mandamus, Arifin Zakaria FCJ (as he then was) stated that:

> [61] On the first issue, *by definition an order of mandamus is a command issued by the court to an authority to perform a public duty placed upon it by law* ...
>
> ...
>
> [76] The appellant in the present case, *as the Minister in charge of financial matters for the state is naturally responsible for the payment of the judgment sum. An order of mandamus may, in the circumstances, be issued to enforce such a compliance by the appellant.* This proposition flows from the judgment of Lord Denning in Franklin v The Queen, where the judgment creditor took out a summons under O 48 of the English RSC to examine the relevant officer of the Government of Southern Rhodesia to determine the financial resources available to the government to satisfy his judgment ...
>
> ...
>
> [81] From the above, the position in law is that, *there is a duty on the part of government to pay the amount stated in the certificate issued under s 33(3) of the GPA to the respondent. It is not a matter of discretion for the government whether to pay or not to pay. As a statutory duty it is of course binding on the state government. And it is incumbent upon the court to give effect to such statutory duty and if necessary through the coercive force of the order of mandamus*. (Emphasis added.)

[58] Based on the above, I am of the view that the first respondent has a legal duty to make a decision under s 18 of the SA 1966.

CONCLUSION

[59] Based on the above reasons, it is my conclusion that the first respondent is in breach of its statutory duty under s 18 of the SA 1966 on its omission or failure to make a decision on Pejuang's appeal. All convenient speed or reasonable time means 'as soon as possible' or 'within a reasonable time', and not 'as late as possible'.

[60] Therefore, the time taken by the first respondent to decide, (approximately 5 1/2 months until now) would be unreasonable. Hence, the prayer sought by the applicant for a declaration on the same should be allowed.

[61] Consequently, the prayer involving the second issue on mandamus should also be granted against the first respondent for him to give his decision on Pejuang's appeal under s 18(b) of the SA 1966. This is because s 44(1) of the SRA 1950 confers wide power to the court to grant this prerogative writ to direct the first respondent to perform his public duty which he is required to perform by reading both s 18(b) of the SA 1966 and s 54(2) of the IA 1948 and 1967.

[62] It is my view that based on the facts and circumstances of this case, the order of mandamus should be granted against the first respondent to give his decision on the appeal by the applicant within 14 days from the date of this judgment.

[63] However, I am of the view that the prayer for mandamus order to instruct the second respondent to finalise the registration of Pejuang must be dismissed. This is because the relief sought for falls outside the scope of s 18(b) SA 1966, which is limited to confirm, reject or vary the decision of the Registrar within all convenient speed or reasonable time.

[64] As a consequence, the application for judicial review proceedings (encl 9) in prayer 1(i), (ii) and (iii) — (14 days) is hereby allowed with no order as to costs.

Enclosure 9 allowed in part.

Reported by K Selvaraju